

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6421 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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R K DIVYESHWAR

Versus

STATE OF GUJARAT

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Appearance:

MRS KETTY A MEHTA with Mr. D.C.Rawal,advocate for the Petitioner.

MR S.N.Shelat, Addtiional Advocate General for the Respondentd.

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CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 11.11.1998

ORAL JUDGEMENT

By means of this petition, the petitioner has challenged the order dated 5.4.1993 of the Secretary to

Government of Glutaric, dismissing him from service under Rule 6 of the Glutaric Civil Service (Discipline and Appeal) Rules, 1971.

2. The facts of this case, brief stated, are as under:

The petitioner had practised as an advocate in the High Court of Gujarat. He was selected as a Judicial Magistrate, First Class in the year 1981 and he took charge on 15.12.1981 and since then was working as Judicial Magistrate, First Class till the impugned order of dismissal from service was passed on 5.4.93. At the relevant time, he was working as Civil Judge (JD.) and Judicial Magistrate, First Class, Anand. On 14.11.1991, at about 9.30 PM the petitioner reached at the house of Ms. S.C.Srivastav,, Joint Civil Judge (JD.) and Judicial Magistrate, First Class, Petlad. Hence she was surprised to see him at odd hours. She inquired as to why he had come, but he could not give any satisfactory answer. The conduct of the petitioner was seen unnatural and he appeared to be in drunken condition. She was very much embarrassed as her residence was in a lonely place. There was another quarter of Mr. Vasa falling on the Way to her quarter. He did not opt to visit Mr. Vasa's house first. From the behaviour of the petitioner, she felt unsafe in his presence. Hence, she sent her servant Mr. Anwar who was also present there to call Mr. Vasa, Civil Judge (J.D.), Petlad. On her request, he came from his house. Her impression was that had she been alone, the petitioner would have misbehaved a lot. Both the petitioner and the complainant were not much known to each other. She knew him as a colleague Judge only. According to her, he had no reason to visit her house. Both of them had never been posted at one station together. She was very much annoyed by this chapter of uncalled visit by the petitioner and she was very much mentally disturbed due to the incident and she went to narrate about the incident to the District Judge, Kheda at Nadiad on 18.11.91, who directed her to give a complaint in writing. Accordingly, she went again on 19.11.91 and reported in writing the matter to the District Judge, Kheda at Nadiad which is Annexure "L" to the petition. The District Judge, Kheda at Nadiad also recorded the statement of Ms. S C Srivastav then and there. At that time, Mr. A.G.Vasa, Civil Judge (J.D.), and JMFC, Petlad was also present. His statement was also recorded at that time. The statement of Mr. Ahmedmiya Malek was recorded on 25.11.91 by the District Judge, Kheda at Nadiad. The matter was referred to the High Court by a letter dated 16.12.91. The Joint

Registrar, High Court of Gujarat under the direction of the then Acting Chief Justice of the High Court of Gujarat informed the petitioner about the decision to hold a departmental inquiry against the petitioner on the following charges.

"That while working as Joint Civil Judge(J.D.) and Judicial Magistrate, First Class, Anand

- (i) On 14.11.91 at about 9.30 PM you went to the residence of Ms. S.C.Srivastav,, Joint Civil Judge (JD.) and JMFC, Petlad. You tried to misbehave with her.
- (ii) You are furthermore charged that neither you had sought permission to leave the headquarters for going to Khambhat and Petlad on 14.11.91 nor you informed the District Judge, Kheda about your visit to Petlad thereafter; and
- (iii) These acts of yours are acts of grave misconduct and tantamount to conduct of unbecoming of a judicial officer, violating the provisions contained in Rule 3 of the Gujarat Civil Service (Discipline and Appeal) Rules, 1971."

The petitioner was required to submit his written statement of defence to state whether he desires to be heard in person if he fails to give his written statement of defence within 15 days on receipt of memo of charges, it was to be presumed that he did not wish to examine and produce any evidence. He was also called upon to state why above charges or any of them if held to be proved, should not be considered as sufficient ground for imposing upon him any of the major punishments specified in Rule (6) of the Glutaric Civil Service (Discipline and Appeal) Rules, 1971. Any representation if filed with regard to this action taken against him, was to be considered before final order of punishment is passed. The notice was accompanied with a statement of imputation, list of witnesses and list of documents.

3. The petitioner sent a letter dated 13.1.1992 to the Registrar of this Court through District Judge, Kheda at Nadiad. He denied the statement of imputations categorically as false, baseless and incorrect. He admitted in his statement that on 14.11.91 at about 9.00 PM he had gone to the residential quarter of Ms. S.C.Srivastav, Joint Civil Judge (JD.) and JMFC, Petlad, but it was not true that he tried to misbehave with her or his conduct was in any manner goes to show an impression of attempting to misbehave with her. It is also admitted by him that he had left his quarter without

obtaining previous sanction of the District Judge, Nadiad, but he had telephoned him and was subsequently to obtain ex-post-facto sanction which he could not take because of certain reasons. He also denied that he was not known to her and she was not known to him. On the contrary, both the petitioner and lady officer started practice in the High Court together. She was selected as Civil Judge (JD.) in the same batch as he was. Due to several meetings, calls by the District Judge at Nadiad, Cambay, they had more than one occasion to meet each other. Originally being the members of the same Bar, both of them knew each other. He started his practice in Ahmedabad in the year 1979 and from 1978 to 1981, he practised in various Courts and in the year 1980-81, he started his practice in the High Court. From his initial posting at Mahesana to the present station from transfer, that was Anand. He had endeavoured to perform his duties to the best of his abilities judicially and with integrity and there was no adverse remarks during the entire spell of his service. While narrating about the incident, he stated that his maternal sister was residing at Petlad near Shri Ranchhodji temple. The distance from Anand to Petlad is about 20 Kms. while to and fro distance from Anand to Khambhat is more than 120 kms. On the date 14.11.91, at about 7.00 PM his brother-in-law Mr Pravinchadra Trivedi of Petlad, husband of his maternal sister Chandrikaben Trivedi had come to meet him at his residence at Anand and he was to leave for Petlad. Hence, he offered to accompany him on his scooter as he had no vehicle. He had no occasion to go and meet his maternal sister since Diwali. He rang the District Judge, Nadiad before leaving but he came to know from his daughter that the District Judge was not available. That phone was made for obtaining sanction and informing the District Judge that he was to leave for a couple of hours headquarters for Petlad. He also filed a xerox copy of the bill for the phone made from Anand to Nadiad and that phone call was recorded in PWD guest house register on the same date. It was physically impossible to reach Khambhat at a distance of more than 60 kms. from Anand and return to Petlad by round about 9.00 p.m. He had gone to Petlad to leave his brother-in-law on scooter and also to meet his wife (his maternal sister) where he had a dinner. When he was leaving the residence of maternal sister at about 9.00 PM on 14.11.91, in the way he started to have some uneasiness feeling and took a chance that as the residence of his colleague Ms. Vasa was on the way, he desired to go there and also wanted to take this opportunity to meet him. But he found that there was no light at Mr. Vasa's quarter and probably other family members might be in an inner room or might be out

of house. Since the light was on in the nearby residence of Ms. Srivastav, he first visited her. There was no action or conduct much less any misbehaviour on his part which could even by ghost of imagination lead anybody to believe of his attempting to misbehave. Regarding the allegation made at serial no.2, he stated in writing to the District Judge for obtaining ex-post-facto sanction would at the most be said to be a technical irregularity which may be graciously condoned. In view of the fact, prior to leaving Anand for Petlad, he had tried to contact the District Judge on telephone at his residence but he was not available. Hence, his daughter on his behalf received the phone. On the next day on 15.11.91, immediately going to the dais, he was called in the chamber of Civil Judge (S.D.), Anand and was informed that his mother was operated at Ahmedabad. Mr. Pathan, Civil Judge (S.D.), Anand received phone call by him on his behalf. Hence he was called upon at about 11.30 a.m. on 15.11.91. He belongs to a respectable family. His father was a doctor. His cousin brother is an eminent Gynecologist and other cousin brother was a director of Commerce Faculty, Gujarat University and his brothers were also well established in the society. He would never think to misbehave with any person much less a judicial officer, more specifically with Ms. Srivastav in the manner as alleged. He is a disciple of Swaminarayan sect. The allegations of Ms. Srivastav were vague in itself and further on the contrary, it is even admitted by Ms. Srivastav that she presumed intoxication and she presumed likelihood of misbehaviour. There was no specific allegation made in that regard. There was no clear cut allegation either made in that regard to presumption of intoxication based on incorrect inference. Such statement which no person of common sound or prudent sense would place reliance upon. He also indicated that the charges levelled against him were totally false and baseless and Ms. Srivastav might have been tempted to level charges against him long after the alleged incident with ulterior motive or for the simple reason that he had reached the place at a time when her undisclosed secrets would have been revealed and being allegations of a lady Judge would be credible too. If anything would have taken place those facts must have been disclosed by her to Mr. Vasa who was called there or to Mr. Malek who was present at the time of the incident. In the present case, no preliminary inquiry was conducted by the authorised officer. Moreover, the learned District Judge who purported to record the statement had done so for which the District Judge was not authorised otherwise to record the statement without specific orders or authorisation of the High Court. The

statements so recorded without authority could not be the basis for inquiry against him. He requested for the copies at his costs or inspection or to grant him permission to inspect the said statements which maybe in the shape of any report sent by the District Judge and none of the charges and allegations made against him can be accepted against him. Hence, none of the charges and allegations made against him can be relied upon and none of the acts being committed by him amounts to acts of unbecoming of a judicial officer being of any misconduct or violative of provisions of Gujarat Civil Service (Discipline and Appeal) Rules, 1971. He also requested for an opportunity of personal hearing prior to taking action against him on the basis of allegations which were false, baseless and untrue and he also requested for personal presence and through an advocate of his choice and for an opportunity to examine defence witnesses during the inquiry in support of his defence.

4. Shri M.A.Trivedi, Judge, City Civil Court, Ahmedabad was appointed as Inquiry Officer for holding a departmental inquiry against the petitioner as per court's letter dated 4.2.1992. After considering the explanation of the officer dated 13.1.92, the Presenting Officer examined p.w. no.1 Ms. Suvarnalata Chandrabhushanlal Srivastav on 10.4.92. In her statement, she stated that at about 9.30 p.m. on 14.11.91, she was in her quarter. At that time, she was in the bathroom adjacent to the drawing room. Anwar who was working as a servant at about 9.30 p.m. had shouted and informed her that some guest had come from Ahmedabad. She asked him to inquire his name from the bathroom. After five-ten minutes, she came out of the bathroom and went to her bedroom where from she saw Anand's Civil Judge (J.D.) sitting in her drawing room. She asked him to sit there and asked Anwar to give water to the officer. Then she asked him to prepare tea. But Mr. Divyeshwar told her that he had come from Khambhat after dinner and he was feeling giddiness and vomiting and asked for Limca. Then she asked her servant to bring a Limca and that was given to the officer. She felt that the conduct of Shri Divyeshwar was unbecoming of a judicial officer and asked her servant to sit outside the quarter. Shri Divyeshwar told her that he wanted to be fresh. Therefore, she showed him the wash basin which was near the bathroom adjacent to the drawing room and she went to her bed-room to give soap to him. When she went to give soap to him, he was near the wash basin. At that time, Divyeshwar came towards her and he spreaded his hands and went forward towards her. Therefore, she had a suspicion and doubt about his intention.

Therefore, she told him that she did not like that thing. Still however, he came towards her. Hence, she had immediately gone to her bed-room where from she gave a call bell and called Anwar and he immediately reached there and thereafter, she had gone outside the gate of the quarter with Anwar. She asked Anwar to immediately call Civil Judge (J.D.), Shri Vasa. The quarter of Shri Vasa was at a distance of about 100 ft. from her quarter in the Court compound. Anwar had rushed running to the quarter of Shri Vasa and had called him. At that time, she was standing outside the gate. She told him that Anand's Civil Judge Divyeshwar had come and it seemed that he was drunk and so he should be taken away by him. Both Mr. Vasa as well as Ms. Srivastav went inside the quarter. At that time, Divyeshwar was sitting on Diwan in the drawing room. Under the guise of watching clear vision of TV, Shri Vasa had taken Divyeshwar to his house. She knew the officer only as a Judge and except that she had no personal relations or touch with Divyeshwar. She was mentally disturbed because of this incident and after four days on 18.11.91, she went to the house of the District Judge, Kheda at Nadiad at about 6.30 p.m. At that time, the Joint Civil Judge, Shri Vasa has also come there. She orally narrated about the incident to Shri Dalal. The District Judge Mr. Dalal told her that she should give in writing if she was to make a complaint and told her to come to the court in the morning on the next day on Tuesday next. Thereafter, she returned to Petlad during night and asked Vasa to accompany her to give his statement. On the next day on 19.11.91, she had gone to Nadiad along with Shri Vasa and gave her complaint in writing in English. She had gone by a bus while Vasa had gone by a scooter to Nadiad. In Nadiad, both had gone to the bungalow of the District Judge at about 9.00 a.m. She handed over a written complaint to the District Judge bearing her signature thereunder. The District Judge also recorded her statement. At that time Shri, Dalal also recorded the statement of Shri Vasa. Thereafter, the District Judge told her to go and therefore, she had left and returned to Petlad by a bus.

She was cross-examined at length. It is admitted that on the night of the incident, two advocates Nazir Mirza and Nazim Mirza had also come to her house in connection with bail application work. They also sat in the drawing room when Shri Divyeshwar was also sitting there. They had come with a cover from the Sessions Court. She talked with the advocates only for about 1.1/1 minutes. Shri Divyeshwar had told her that he had come from Khambhat. It is also admitted that she had not

asked Divyeshwar as to why he had come to her house in the late night hours. She had not made any other inquiry from Divyeshwar because she had not found his reply satisfactory. She has also admitted that she might have taken about an hour in writing the complaint exh. 27 in her quarter. She had not mentioned therein about behaviour of Divyeshwar near the wash basin which was in front of her bathroom. She had not at all stated that Shri Divyeshwar had come near wash basin and she ran out of the gate. It was not true that Shri Divyeshwar had advanced his hands towards her to take soap. A specific question was put to her as to what was the distance between the place where she was standing and Divyeshwar was near the wash basin. She stated that it was about 6 ft. from the wash basin. It is also admitted by her that all the doors of her quarter were open and lights were on and TV set was also on.

It is also admitted that she was annoyed since Divyeshwar had come to her house during odd hours and she had also mentioned this fact in her complaint. She had not told Shri Vasa that Divyeshwar had come to her house and he was in drunk condition. She had not talked with Vasa that Divyeshwar was drunk at the time of the incident and she had not talked at all with Vasa in connection with the incident from 18.11.91 to 19.11.91. She had not made any effort to call Anwar during 18.11.91 night to the morning of 19.11.91. She was unable to say exactly whether Divyeshwar had consumed liquor on 14.11.91.

5. The Department has also examined Shri A G Vasa, 3rd Joint Civil Judge (S.D.), as witness no.2. He has stated that both, he and Ms. Srivastav were residing in the common quarters situated in Petlad court compound at the relevant time. On entering the court compound, his quarter was first and then in the same way, Ms. Srivastava's quarter was situated at a distance of about 100 mtrs. On the day of incident at about 9.50 PM he was sitting in his quarter. At that time, Anwarbhai who was working as a servant at the residence of Ms. Srivastav reached there and told him that Ms. Srivastav was immediately calling him. While he was going to the quarter of Ms. Srivastav along with Anwarbhai, Srivastav met him on the way near SDM's office and told him that Anand's Civil Judge Shri Divyeshwar had come and it appeared that he was drunk. Hence, she requested him to take him to his house. He reached at her quarter where Shri Divyeshwar was sitting on the sofa. He had put on pant and a shirt, but he was not able to remember exactly about colours of pants and shirt. At that time, the TV



set was on and cricket match was being displayed. He tried to talk with him and while talking with him, he turned away his face. He wanted to see his eyes to ascertain whether he was intoxicated or not as he had put on colour glasses. He did not find abnormality in the conduct of talking of Ms. Divyeshwar. As the antenna of Ms. Srivastava's TV was not properly working and no clear vision was there, hence he had taken Shri Divyeshwar to his house to watch TV. Both he and Divyeshwar left to his quarter. Shri Divyeshwar came on his scooter and he went on foot to his quarter. Both of them entered the drawing room of his quarter and set to watch TV. He insisted Shri Divyeshwar to have tea as he wanted to know whether he was drunk or not. But he refused to have tea. When ever he tried to talk to him, Divyeshwar used to turn his face to other side. At that time, Divyeshwar had put on helmet and face was covered with helmet. So he could not smell his breath. He sat in his house for about 5 to 7 minutes. Thereafter, he told him that he had to go to Anand. He accompanied him outside his quarter to see him off. He started his scooter and went by his scooter, but he could not remove the stand. Hence, he suspected that he was drunk. He pushed the scooter and the scooter had got down from the stand. He had a suspicion that he might have consumed liquor. He also asked him for help if he desired, but he had refused for the same and he left by the scooter. Mr. Vasa then returned to his quarter. Since it was late night, he had not gone again to the quarter of Ms. Srivastav. On the next day, he visited the chamber of Ms. Srivastav and inquired from her whether she had any difficulty on the previous day. She told him that Divyeshwar had tried to misbehave with her, but she had run out of the quarter and had called him. Being a lady, he had not thought it proper to ask her anything more. On 19.11.91 at about 8.00 a.m., Ms. Srivastav reached at the house of Mr. Vasa and told to give a statement before the District Judge in connection with the incident which had taken place. He refused and told her that he would go if the District Judge would ask him. She informed that on the previous day, she had met the District Judge and he had called her for a statement. He told her to go to the residence of the District Judge by any other means as he was to go by his scooter. He went to Nadiad and reached at the bungalow of the District Judge at 9.00 a.m. to 9.30 a.m. At that time, the District Judge Shri Dalal was present and Ms. Srivastava was also there. The District Judge had also recorded statement of Ms. Srivastav inside the room. It was not recorded in his presence. After her statement, Shri Dalal recorded his statement. At that time, Ms. Srivastav was not present

inside the room.

During the cross-examination, he said that the distance between Petlad and Nadiad is 25 to 27 kms., while the distance between Anand and Khambhat would be about 50 to 52 kms. The distance between Petlad and Anand might be about 25 to 26 kms. He also admitted that while serving as a Judge, one is required to immediately leave headquarters he can leave the headquarters for 3-4 hours without obtaining prior permission from the District Judge and immediately on return, intimation in writing to that effect has to be given to the District Judge. In that connection, he also admitted that an oral intimation can be conveyed to the District Judge for leaving the headquarters. He also admitted the fact that Ms. Srivastav told him that it appeared that Mr. Divyeshwar was drunk. He also admitted that it was true that nothing untoward happened when they had taken tea at the quarter of Ms. Srivastav. He was unable to know whether Shri Divyeshwar was drunk or not, but he had a suspicion for the same. He also admitted that the fact that Mr. Divyeshwar had told him that after dinner, he was not feeling well on the way. He also admitted that it was true that while he was insistently offering tea to Shri Divyeshwar in his quarter, nothing untoward had happened during that time and thereafter also. He had only a suspicion in his mind that Divyeshwar was drunk because Ms. Srivastav had told him that it appeared to her that Divyeshwar was drunk and in addition, while going to Anand, he could not remove his scooter from the stand. He wanted to know as to whether he was drunk but he repeatedly turned away his face.

6. The department has also examined Anwarmiya Malek as witness no.3. On the day of incident, he had gone to the quarter of Ms. Srivastav at about 5.30 p.m. and remained there till 9.00 p.m. He had prepared hot water for her bath. After she went to take bath, he had advanced 50 paces from the quarter he saw one unknown person with helmet coming. He felt that Ms. Srivastav was taking bath and this unknown person was going to her quarter. Hence, he rushed to stop the scooterist and asked him as to from where he was coming. In spite of asking him thrice, he had not replied. Thereafter on asking on 4th time, he replied that he was coming from Ahmedabad. Then he opened the gate and the door of the quarter which he had simply closed. He took out his helmet and coat and threw out on the chair as if he was in his own house. He had also taken out shoes and kept the shocks. Then he sat on the cot. He informed Srivastav

who was taking bath in the bathroom that some guest had come from Ahmedabad. She asked him to know his name. He had thrice or four times asked him the name as to who had come, but he had not given any reply. After about 5 to 10 minutes, Madam had come out of the bathroom and had gone to her bedroom from the bathroom. After seeing the person, the Madam asked him to prepare tea for the guest. At that time, guest told that he was coming from Khambhat after taking dinner and that he was not well, so please call for Limca. At that time, two advocates Nazimbhai and Nazirmiya had also come. They told him to ask the Madam whether they could come inside for bail. Then he went to talk to Madam and he informed the Madam who asked him to send those advocates inside. Meanwhile, he went to take a Limca from the market which was at a distance of about 450 mtrs. from the quarter and returned with a Limca within a 1.1/2 or 2 minutes and then two advocates met him outside the gate. Then Madam asked him to sit outside the gate. He was standing outside the gate. After about 1.1/2 or 2 minutes thereafter, call bell of the quarter rang. Hence, he went inside the quarter. At that time, Madam looked frightened and she came out of the quarter along with him and asked him to call Mr. Vasa immediately. He went to the quarter of Mr. Vasa and informed Mr. Vasa that Ms. Srivastava was calling him. Mr. Vasa also reached at the quarter of Ms. Srivastav. Mr. Vasa and Mr. Srivastav were at the gate of the quarter and they went inside the quarter. Mr. Vasa stayed for about 5 minutes and he took Mr. Divyeshwar to his quarter. It appeared to him that the guest was in drunk condition. After going of Mr. Vasa and Divyeshwar, he was informed by the Madam that he was a Judge of Anand and then he also went to his house.

In the cross-examination, he has admitted that a criminal case was filed against his brother and his wife and other brother in which Montu Nazirbhai was their advocate. His mother was also an accused in that case. That case had been disposed of before three-four months. It was in the court of Ms. Srivastav. Ruksanaben had also filed a criminal case against his brothers and brothers' wives and his mother and that case was compromised. That case was pending in the Court of Ms. Srivastav at that time. A case under Prohibition Act was also filed against his father. It was filed during the tenure of Shrikh saheb. It was tried in the court of Ms. Srivastav and that was pending at that time. In that case, his father had been acquitted. His father had filed a case against police which was pending at that time in the Court of Ms. Srivastav. It was also admitted that he saw one scooterist with helmet and going near Sales Tax

building in the court compound, the quarter of Mr. Vasa and Sales-tax building are in the same line at a distance of about 10 to 15 ft.

7. The petitioner has examined two witnesses in defence namely Shri B.A. Gadhvi, Second Joint Civil Judge (JD) and Judicial Magistrate, First Class, as D.W. no.1 and Pravinchandra Karunashanker Trivedi as DW no. 2. Mr. Gadhvi has stated during the inquiry that he was working as Second Joint Civil Judge (JD) and Judicial Magistrate First Class, Ahmedabad from June,1990. His quarter was near the court building in Anand. Government guest house is situated on one side of the quarters of officers and on the other side, there is court building. He was residing on the first floor and Mr. Divyeshwar was residing on the ground floor. He knew brother-in-law (sister's husband) of Divyeshwar. He was residing in Petlad. The witness was present at his house at about 6.00 p.m. on 14.11.91. On that date, at about 7.30 p.m. Shri Divyeshwar had informed him that he wanted to go to Petlad to leave his brother-in-law at Petlad and he also told him that he will return within an hour. He also informed that he had already intimated the District Judge on phone in that connection. Shri Divyeshwar and his brother-in-law had left on his scooter. They left at about 7.30 p.m. and he did not know about his return on that date as he was not informed about his return. On the next day, Divyeshwar told him that he had received a telephonic message in the Court from Ahmedabad about performing an operation on his mother. Hence, he was required to go to Ahmedabad on the next day on 16.11.91. He sought written permission to leave the headquarters and he had given his consent to retain his charge and that application was forwarded to the District Judge. After about one month, Divyeshwar told him that he had received a notice from the High Court through District Judge for a departmental inquiry against him. He also asked him as to in which connection notice was given and Divyeshwar told him while returning after leaving his brother-in-law from Petlad, he had gone to the residence of Ms. Srivastav as he was not feeling well and under a misunderstanding that he was drunk, Ms. Srivastav had made a complaint against him. Hence he was given a notice. In the cross-examination, he made it clear that it is true that one has to hand over the charge to other if he wants to go out of headquarters for more than 8 hours. He had not inquired from him as to what had transpired between him and the District Judge.

8. The petitioner also examined Sri Pravinchandra Karunashankar Trivei in his defence as DW 2 Sri

Pravinchandra Karunashanker Trivedi has stated that he was serving as a cashier in Piplav Branch for about last 20 years and was residing in Petlad. Petlad is at a distance of six kms. from Petlad, hence he was attending his duties daily from Petlad. His wife's name was Chandrikaben and R K Divyeshwar was his brother-in-law. On 14.11.91, he had gone to meet Divyeshwar at Anand by a bus. He went to his house at 6.45 p.m. He had gone to Anand to meet his Union Leader and as he was not available at his shop which is in front of ST bus stand, he had gone to the residence of Divyeshwar. He sat at his house for about half an hour. Thereafter, he told him to leave him at Petlad on the scooter. Both of them had gone to Petlad. Divyeshwar also told him that as he was to leave the headquarters, he was required to obtain permission from the District Judge. Therefore, he had gone to the guest house for a telephone call and he had gone to meet Mr. Gadhvi who was residing on the upper storey floor. Then both of them had left by the scooter at about 7.15 p.m. and reached at Petlad about 7.45 p.m. to 8.00 p.m. Thereafter, his wife insisted Shri Divyeshwar for a dinner. However, he told that he had some trouble in his stomach. On much persuasion, he took dinner including Khaman which was brought from outside and he had left his house at about 9.00 p.m. to go to Anand. For going to Anand, one has to go from road passing from near Petlad railway station. Petlad Court building is also situated on that road and it was a walking distance of 10 or 15 minutes from there. On 9.2.1992, he met Divyeshwar at the native place at Rupal in Janoi ceremony of his son. Rupal is situated within Gandhinagar district. Then he asked him as to what time he reached Anand on 14.11.91. Divyeshwar replied to him that he had reached between 10.00 p.m. to 10.30 p.m. He had also told him that after leaving his house, he was feeling giddiness and hence he had gone to the residence of his colleague friend in the court building which is just on the way. He was vomiting. His colleague Judge felt that he was drunk and that she made an application against him. The witness also told him that whenever his presence is required in that connection, he will be present there.

In the cross examination, he stated that before he left for going to Anand before going to Petlad from Anand. Divyeshwar made a phone call. He was alone at that time. At the time when he made the call, he was not knowing as to what had transpired on phone. He also did not know as to what talk had taken place with Shri Gadhvi. He only informed him that he was going to tell about his going to Petlad. Shri Divyeshwar had not

visited his house.

9. After closing of the evidence, the petitioner was required to give his, statement and he gave his answers to the questions put by the Inquiry Officer. The Inquiry Officer submitted his report dated 21.7.1992 on 16.9.1992 and came to the conclusion that the department has proved charge no.1 and charge no.2 against the petitioner. Such proved acts would amount to misconduct and acts would be considered as the acts for unbecoming of a judicial officer and were violative of the provisions contained in Rule 3 of Gujarat Civil Service (Discipline and Appeal) Rules, 1971 which speak that every Government shall do nothing which would level him for unbecoming of a Government servant. There are also other provisions of Sub-rules in Rule 3 about maintaining absolute integrity and devotion to duty but the case of the petitioner does not fall under Rule 3(i) (ii), but the case of the petitioner clearly falls under Rule3(iii) of the said Rules. Charges and more particularly charge no.1 about misbehaviour with a lady Judge in the night of 14.11.91 appeared to be proved. The Inquiry Officer felt that a judicial officer should not have misbehaved in such a fashion with a lady civil Judge and his such act would definitely make unworthy for becoming a Civil Judge. If the Judge would behave in such a fashion, then it would definitely create very bad image in the public at large and also amongst judicial fraternity. No one would expect such type of behaviour from a person who is holding a post of a Judicial Officer. Hence, he held that the department had successfully established charges and the statement of imputation against Mr. Divyeshwar, Joint Civil Judge (J.D.), Anand. After submission of inquiry report a show cause notice dated 16-4-1992 was issued to the petitioner for proposed punishment. The petitioner submitted his reply dated 14-12-92. The matter was placed before the Disciplinary Committee consisting of Hon'ble N.J. Pandya and Hon'ble S.M. Soni, JJ. That Committee submitted its report dtd 1-3-93 confirming the findings of the Enquiry Officer and recommended that the extreme penalty of dismissal from services be imposed. That report of Disciplinary Committee along with the inquiry report was placed on table for 48 hours for exhibition to Hon'ble Judges of the High Court. Thereafter, it was deemed to have approved by the High Court. The recommendation of the High Court was sent to the State Government, Government of Gujarat accepted the same and by Notification and Resolution dated 5-4-1993 dismissed the services of the petitioner.

10. Learned counsel for the petitioner submitted that the complaint was made by Ms. Srivastav to the District Judge on 19.11.91. The District Judge recorded the statement of Ms. Srivastav and of Mr. Vasa then and there. Later on the statement of Anwarmiya Malek was also recorded by the District Judge on 25th. The contention of the learned counsel for the petitioner is that the District Judge without any authorisation of the High Court, made a preliminary inquiry instead of sending the written complaint of Ms. Srivastav to this Court. The preliminary Inquiry made by the District Judge is without authorisation of the High Court and it cannot be relied on against the petitioner and whole disciplinary proceedings are vitiated.

11. I have gone through the papers in this respect. The Inquiry Officer did not care to see the papers on record and he made an observation on his feeling that it was true that preliminary inquiry was to be ordered by the Hon'ble High Court, but it did not mean that the District Judge could not make a formal inquiry just to see whether there was any substance or truth about the type of serious allegations against the Civil Judge. The High Court has also found after considering the statements recorded by the District Judge that there was no point of holding a further preliminary inquiry in this matter so that the departmental inquiry was ordered against the delinquent. In fact in this respect on 18.11.91 District Judge informed the Registrar on phone at 8-40 p.m. that on 15.11.91 Mr. Divyeshwar, Civil Judge (J.D.), Anand had gone to house of Miss Shrivastav at Petlad at 9.30 p.m. He told her that he had come from Khambhat and he was having vomiting sensation and he asked for a Limca. She further informed the District Judge that at that time, Mr. Divyeshwar was not in his senses and he appeared to be in drunken state. She then called Mr. Vasa who was also a Civil Judge at Petlad who took him away. At 9.40 PM the Registrar informed Mr. Justice B S Kapadia, Unit Judge who asked the Registrar to inquire (1) whether Ms. Srivastav and Mr. R.K. Divyeshwar were posted ever together at any station (2) Whether Mr. R.K. Divyeshwar had gone to Ms. Srivastav's place in a vehicle (3) The District Judge should record the statements of Ms. Srivastav and Mr. Vasa (4) The District Judge should inquire from Ms. Srivastav whether she wanted any protection and if she wanted, then he should inform the DSP to provide protection of a constable or of a lady police constable. Thereafter, the Registrar informed the then Acting Chief Justice along with suggestions made by the Unit Judge, he also tried to contact the District Judge Mr. Dalal on

phone, but he was not available on the line, so he phoned to Mr. D C Mankad and asked him to inform Mr. Dalal to phone to him. At 9.55 p.m. Mr. Dalal phoned the Registrar and he was instructed as above. Thus, the District Judge was authorised by this court to record the statements of Ms. Srivastav, Mr. Vasa and other persons. In this manner, preliminary inquiry made by the District Judge Mr. Dalal was perfectly justified on the authorisation of this Court. Thus, the inquiry cannot be said to have been vitiated on this ground and there is no substance in this argument advanced by the learned advocate for the petitioner.

12. Learned counsel for the petitioner further argued that the entire record of the proceedings has not been placed before the Full Court meeting for discussing and approval as required under Art. 235 of the Constitution. Only inquiry report with the report of the Disciplinary Committee of 3 pages was placed on table for exhibition for 48 hours and no judge perused as there is no endorsement of any Judge that the findings were correct and liable to be approved. Thus, approval of the Court is violative of Article 235 of the Constitution and whole proceedings are vitiated.

13. I have carefully considered the submissions of the learned counsel for the petitioner. It is very unfortunate for a judicial officer, not only of this Court but in the whole of the judiciary of the country. In case a Judicial Officer is awarded a major punishment, no appeal or revision is provided before any authority of law for reappraisal or reassessment of the evidence on record against the findings arrived at by the Inquiry Officer/Disciplinary Authority. In the disciplinary proceedings no rule of probability of preponderance is available, rule of evidence is also not applicable, meaning thereby the factors which are not relevant admissible evidence i.e. hearsay evidence, rumor, imagination, suspicions are also taken into account to arrive at the findings. We cannot overlook tendency wherein the allegations and imputations are made motivatively in order to getting the officer transferred or overawe them. Of course rule of natural justice is applicable only to some extent. The officer is provided opportunity of hearing including adducing defence evidence and to make representation. Some times consideration of defence or his evidence is totally ignored. The finding of the Inquiry Officer are considered to be gospel truth and the views of the disciplinary authority for extreme penalty are considered



sacrosanct. In this High Court, copy of the proceedings of the Inquiry Officer and of the Disciplinary Committee of this Court are not circulated amongst all the Hon'ble Judges. No discussion takes place amongst the Judges in full court meeting regarding the findings and the evidence in support thereof. Only formality is performed that a notice is sent informing the Judges that all the departmental proceedings in connection with the delinquent officer will be placed on table for exhibition for 48 hours on a particular date. Thereafter, it is deemed that the full court has approved the report of the Disciplinary Committee recommended for the extreme penalty. Copies of the proceedings have not been circulated to the Judges for application of their mind. No Judge is required to endorse that he has perused and found the same to be correct decision. Had it been placed before the full court after all the papers of the inquiry and disciplinary proceedings have been circulated to every Judge of the High Court, it can be presumed that each Judge has applied his mind and considered and the Hon'ble Judge might have come to a different view. In Allahabad High Court, all care, caution and safeguards are being taken in passing major penalty against any delinquent officer. First of all, inquiry report is placed before the Administrative Committee consisting of 9 Judges including the Chief Justice. After perusing and considering the same, usually some clarification or explanation is called for from the delinquent officer in regard to any particular point. After obtaining explanation, the Administrative Committee again considers the matter for major penalty and if it comes to a conclusion that major penalty should be awarded to the delinquent, then, it requests the Chief Justice for placing it before the full court meeting. A photostat copy of the entire proceedings are circulated to each and every Judge and the matter is placed before the full court meeting where each and every aspect and evidence and findings are analysed, discussed and considered with the help of case law and then a decision is taken. Some times voting on the particular point is also taken. If the full court comes to a conclusion that major penalty should be awarded then a notice is issued to the officer regarding the recommendation of dismissal to the State Government. It is no doubt some times, full court directs heavier punishment and for that purpose, another notice is served on the officer therefor. Then by the order of the full court decision the matter is recommended to the State Government for imposition of major penalty. In one case, full court took a decision for dismissal of a particular delinquent officer. After the order passed by the Governor of Uttar Pradesh State,

the officer challenged that order before the Division Bench of High Court of Allahabad. The Division Bench quashed the order imposing major penalty of dismissal. The High Court went to the Supreme Court by way of filing Special Leave Petition (SLP) where the statement was made on behalf of the High Court that some times may be granted to reconsider the matter, for that purpose time was granted and the matter was again placed before the full court meeting where the major penalty was again considered and reduced only that of withholding of three increments. But I find that no safeguards are being taken in this High Court and no other Judge except two Judges who are the members of the Disciplinary Committee applies their mind to the facts and circumstances of the case on administrative side for recommending imposition of major penalty. Can it be said that it is a penalty which was considered by each of the Judges of the High Court under Article 235 of the Constitution of India after completing formality of placing the record of the disciplinary proceedings on table for 48 hours for exhibition, it is presumed that it is the decision of the High Court. Technically speaking it may be legal but factually no Judge except two Judges amongst the members of the Disciplinary Committee applied their mind to the facts and circumstances of the case on administrative side. In this respect the Supreme Court has laid down rule of law in the case of the Registrar of High Court of Madras Vs. R. Rajaih, reported in AIR 1988 SC 1388 which reads as under :

"Para 23 - In regard to the case of the other respondent namely K. Rajeshwaran, the High Court took a view that constitution of the Review Committee by the Chief Justice not by the full court was illegal. We are unable to accept the view of the High Court. We failed to understand why the Chief Justice cannot appoint a Review Committee or an Administrative Committee. But in one respect, the High Court is, in our opinion, correct namely that the decision of the Review Committee should be placed before the full meeting of the Judges. In respect of the respondent K. Rajeswaran, the decision and the recommendation of the Review Committee was not placed before the full court nor is there any material to show that the same was circulated to the Judges. In that sense, the recommendation of the Review Committee was considered was not strictly legal."

Imposition of major penalty requires due care,

caution and safeguards by plurality of the view of the Judges particularly where no appeal or revision of evidence and finding of the Inquiry Officer/Disciplinary Authority is provided on administrative side and there is no scope of exercise of judicial review by the High Court on judicial side under Article 226 of the Constitution for complete justice as and envisaged Section 11A of the Industrial Disputes Act to the Tribunals and under Article 142 of the Constitution of India to the Supreme Court.

14. The learned advocate for the petitioner further contended that it is a case of no evidence and no prudent person would give rationale that the petitioner would have misbehaved with Miss Srivastav in any manner, inasmuch as she felt insecurity, suspected or doubted on the conduct of the petitioner, he might have misbehaved with her on the basis of his talk. Now, it is not a case of the department that the petitioner was intoxicated at the relevant time. In the drawing room, she felt that the petitioner was not talking to her satisfaction and hence asked her servant to sit outside. She came with soap from her bed room to the wash basin where the petitioner was directed to be fresh and he advanced towards her to take a soap and raised his hands though this fact of spreading hands was stated by her for the first time during her deposition in the inquiry, after the period of five months from the date of incident. This fact was not stated either in the complaint which was made after five days nor in her statement recorded by the District Judge. It may or may not be improvement but admittedly she went to the petitioner with a soap. It was natural for the petitioner to raise his hands to take a soap. Spreading of hands gave a rise to a suspicion to her mind that the petitioner had some bad intention. On suspicion or doubt, it cannot be a basis for trying to misbehave with her. There is no evidence on record to show that he made any attempt to misbehave with her. Though he had ample opportunity to misbehave with her in the drawing room or at the time when he was near the wash basin, even when she went to her bed room, he had not followed her. There was no third person at that time, but he had not touched her body even her finger. Thus, the punishment is based on no evidence and she relied on a decision Division Bench of this Court in the case of S.H. Sharma Vs. South Gujarat University reported in 1982 (1) GLR 233 wherein it has been held "Mere suspicious, even if honestly bonafide entertained on the basis of opportunity cogent circumstances, was held to be out of bound even in domestic enquiries.."

15. On the contrary, the learned Additional Advocate General Mr. Shelat on behalf of the High Court contended only in respect of charge no.1, it was an intentional act of the petitioner who visited the house of the lady officer at odd hours of night with whom he had no much acquaintance and treated her house as his own house by putting of helmet and jacket on a chair and shoes. His talks were not normal. He tried to misbehave with her when he was near the wash basin by advancing towards her and spreading his hands and hence, the authorities came to the correct finding that he tried to misbehave with her at the relevant time. This Court has no jurisdiction to appreciate the evidence and cannot even interfere with the findings arrived at by the Inquiry Officer which was confirmed by the Disciplinary Committee of two Judges of this Court on administrative side and even the punishing authority has also applied its mind in imposing the sentence. The only consideration is that the Court/Tribunal in its judicial review has to consider whether the conclusion is based on evidence and support the finding or whether the conclusion is based on no evidence. This Court cannot even consider proportionality of the punishment and relied on a decision in the case of High Court of Judicature at Bombay through its Registrar vs. Uday Sing and others reported in AIR 1997 SC 2286; High Court of Judicature at Bombay through its Registrar Vs. Sirish Kumari Rangrao and another reported in AIR 1997, SC, 2631 and Union of India Vs. Ganayuthan, reported in AIR 1997, SC, 3387.

16. I have gone through the record and have given anxious thought to the arguments advanced on behalf of the learned counsel for the parties.

17. First of all, I take notice of the fact that the authorities cited by the learned Additional Advocate General are in connection with integrity of the officers who demanded illegal gratification. In the case of High Court of Judicature at Bombay through its Registrar vs. Sirish kumari Rangrao, reported in AIR 1997 SC, 2631, the Supreme Court gave a comprehensive and complete picture of corruption in the society and a judicial officer is expected to be dead honest having absolute integrity which is a part and parcel of the conduct as required from a judicial member. In the third case. the Government suffered substantial loss due to misconduct of the petitioner of that case. But in the instant case, the question does not relate to the integrity of the petitioner. I am conscious of the

limitation wherein reappreciation of evidence is not permissible in judicial review in the extraordinary jurisdiction of his Court under Article 226 of the Constitution as laid down by the Supreme Court in the case of BC Chaturvedi Vs Union of India, reported in AIR 1996, SC, 484. But in the instant case, we have to see what is the evidence on record which has been considered by the authorities to arrive at said conclusion. The evidence of Mr.A.G.Vasa and Anwarmiya Malek is of corroborative nature regarding previous and subsequent conduct of Mr. Divyeshwar. In respect of the actual happening which took place with Ms. Srivastav at the wash basin, the main evidence in respect of the incident is only of Ms. Srivastav who has given four statements in respect of the incident which are given as under:

(1) Ms. Srivastav made an oral complaint at about 8-00 or 8.30 p.m. on 18.11.91.

Mr.B.P.Dalal, District Judge,Nadiad who reported the matter to the Registrar of this Court at 8-40 p.m. that Mr. Divyeshwar, Civil Judge (J.D.), Anand had gone to the house of Ms. Srivastav at Petlad at 9.30 p.m. on 15.11.91. He told her that he had come from Khambhat and he was having vomiting sensation and asked her for a Limca. At that time Mr. Divyeshwar was not in his senses and he appeared to be in a drunken state. She called Mr. Vasa who was also a Civil Judge (J.D.) at Petlad who took him away. Wrong date of incident as 15-11-91 in place of 14-11-91 might be as a result of either due to wrong impression of the District Judge Dalal or the Registrar of this Court.

(2) The second statement came when the complaint was presented by Ms. Srivastav to the District Judge, Mr.Dalal in the morning of 19.11.91 wherein it is stated that she was surprised when Mr. Divyeshwar suddenly visited her house at 9.30 p.m. at odd hours of night,his conduct seemed to be unnatural as he could not give satisfactory reply and he appeared to be in drunken condition. She was very much perturbed as she was living alone and he had not visited the house of Mr. Vasa whose quarter fell first in the way. She felt herself unsafe in his presence, hence she called Mr. Vasa through her servant. He came and on her request he took him away.

(3) She also gave her statement which was recorded by Mr. Dalal,the District Judge in the morning on 19.11.91, soon after receipt of the written complaint from Ms. Srivastav wherein she stated that Anwar, her servant informed that some guest from Ahmedabad had come when she

was in her bathroom. She came after 5 or 10 minutes and found Mr. Divyeshwar, Civil Judge Anand sitting in her drawing room. She asked Anwar who give him a glass of water, but Mr. Divyeshwar told her that he was coming from Khambhat after taking dinner and he was feeling vomiting sensation and giddiness and asked for a Limca. She gave him a Limca through Anwar. She had some doubt from his talking. Hence, she asked her servant to sit outside. After taking Limca, he told her that he wanted to be fresh. She showed the wash basin and went to give him a soap from bathroom. He advanced towards her. Looking to his intention, she had some doubt about his intention. She told him that she did not like such things and asked to remove the misunderstanding, if he had any. Even then he advanced towards her. She asked her servant to call Mr. Vasa. When Mr. Vasa came, she was standing outside the entrance of the compound. She informed Mr. Vasa that Divyeshwar appeared to be in drunken condition and requested him to take him away. Mr. Vasa along with her entered in the quarter. At that time, TV was on and Mr. Vasa asked Mr. Divyeshwar to go to his house as TV vision was not clear. Mr. Divyeshwar went with Vasa since she was mentally disturbed, she could not give the complaint immediately.

(4) She was examined before the Inquiry Officer where she deposed that when she was in her bathroom, her servant Anwar Malek informed her that some guest had come from Ahmedabad and she came after five minutes from the bathroom. and she went to the bed room wherefrom she found Mr. Divyeshwar sitting in her drawing room. She asked her servant to give him water and prepare tea for him. Mr. Divyeshwar told her that he had come from Khambhat after taking dinner and he was feeling giddiness and vomiting sensation, hence requested for a Limca. She gave him a Limca through Anwar. She felt at that time that the behaviour of Mr. Divyeshwar was unbecoming and hence she asked her servant to wait outside. Mr. Divyeshwar told her that he wanted to be fresh. Hence, she showed him wash basin and went to take a soap in the chowk. When she went from verandah to give him soap, Divyeshwar came towards her and spreaded his hands and advanced towards her. Hence, she had a suspicion and doubt about his intention. She told that she did not like such things. Even then he advanced towards her. She went to the bedroom and rang a call bell. Anwar reached inside the quarter. She also went outside the quarter with Anwar and asked him to call Mr. Vasa immediately. Mr. Vasa came at that time. She was standing outside the gate, she informed him that Mr. Divyeshwar, Civil Judge, Anand appeared to be in drunken

state and she requested him to take him away. When Mr. Vasa reached in the drawing room, Divyeshwar was sitting on the Diwan. Under the guise of clear vision, he took Mr. Divyeshwar to his house.

From four statements of Ms. Srivastav, the following facts emerge.

(i) That Mr. Divyeshwar visited the house of Ms. Srivastav at about 9.30 p.m. on 14.11.91.

(ii) That she orally reported the matter to the District Judge, Nadiad on 18.11.91 at about 8.00 or 8.30 p.m. after about four days.

(iii) She made a complaint in writing in the morning of 19.11.91 to Mr. Dalal, District Judge, Kheda at Nadiad

(iv) There is nothing either in oral or in written complaint that the petitioner tried to misbehave with her except tht she had a suspicion or doubt that he was drunk.

(v) In her statement recorded by the District Judge, she gave out that near wash basin when she went to give him a soap, he advanced towards her, she felt his intention and warned him that she did not like and still however, he advanced towards her and she called her servant by ringing a call bell and asked her servant to call Mr Vasa immediately and went outside the gate.

(vi) In her statement before the Inquiry Officer, she made a further improvement and added that at the time when he was near the wash basin, she brought a soap to give him. He spreaded his hands and advanced towards her. She went to her bedroom and gave a ring to call her servant and asked her servant to call Mr. Vasa immediately and went outside the gate. Then Mr.Vasa came. She informed him that Mr. Divyeshwar appeared to be in drunken state and asked him to take Mr. Divyeshwar away.

(vii) In all the four statements, she had a suspicion and doubt that the petitioner was in drunken condition.

(viii) In all the statements, she gave out that the petitioner told her that he had come from Khambhat after taking a dinner and was feeling vomiting sensation and giddiness and asked for a Limca.

18. Thus, there is no evidence on record to show that the petitioner had consumed liquor and was under intoxication. There is no charge nor any finding of the Inquiry Officer in this respect.

19. So far as the different version of Mr.Divyeshwar is concerned, the Inquiry Officer has made the following observations:

"It is seen that there is no dispute by the delinquent officer that he had gone to the residence of Ms. Srivastav on 14.11.91 at odd hours i.e. at 9.30 p.m. or so. It is also not in much controversy that as the delinquent himself has practically admitted in further statement about the presence of Ms. Srivastav's servant, namely Anwar Malek on the night of 14.11.91 at 9.30 p.m. or so. It is also not in dispute that Mr. A G Vasa who was the Civil Judge (JD.) and JMFC at Petlad, at that time had come to the residence of Ms. Srivastav on that night. So there are undisputed facts in this inquiry."

20. So far as the factors which were considered by the Inquiry Officer are concerned, the Inquiry Officer was influenced by two material wrong factors; firstly the petitioner tried to misbehave with her by folding her hands and secondly, the petitioner was found drunk by Mr. Vasa as would appear from the narration of facts of the Inquiry Officer in para-4 of his report (on page no.53 and then regarding reasons on page 65 of the paper book). It is not the case of the presenting officer that the petitioner touched her hands for misbehaving with her and it is also not the case of the department that the petitioner was in drunk condition. There is no evidence or charge that the petitioner was in intoxicated stage. The Inquiry officer appears to have also been influenced on the following facts.

(1) The petitioner had no right to visit the house of a lady officer at odd hours particularly when there was no much acquaintance which he smelt something of evil design.

(2) No Judge would make false allegation against a brother Judge, particularly when there was no inimical terms between them.

(3) The statement of the petitioner that he wanted to take an opportunity at the quarter of Mr. Vasa but seeing lights off of his house and considering he might



not be present or other members of his family would be in the inner part of his house went to the house of Ms. Srivastav as lights of her house were on, was not believable and an afterthought as he should have first inquired at the house of Mr. Vasa.

(4) The petitioner could have returned to the house of his sister and could have reached there within five minutes for more relaxation.

(5) No wise or prudent person would like to go to the house of a lady Judge when the house of his sister could be covered within five minutes on a scooter.

(6) It was not necessary for him to go to her house under the guise of feeling unwell.

(7) The petitioner informed her that he had come from Khambhat after taking a dinner though it was the defence of the petitioner that he had come from the house of his sister. He was sitting in the drawing room and waiting for the response of his gesture.

21. This is a case of feeling vs. feeling. On one side Ms. Srivastav felt that Mr. Divyeshwar was drunk and she felt unsafe and insecure in his presence and near the wash basin, when she went to give him a soap, he advanced towards her and spreaded his hands which gave her a feeling that he was to misbehave with her. On the other hand, Mr. Divyeshwar was feeling sensation of vomiting and giddiness and hence he asked for a Limca and wanted to be fresh. He went to the wash basin on her pointing out, she went with a piece of soap to give him and Divyeshwar spreaded his hands for taking the soap.

It is a unique case where both the parties played fair role. As she did not charge him that he touched her body or even a finger. He did not utter any word to show his intention. Even he did not follow her when she went to her bed room for giving a ring to her servant. Mr. Shelat also admitted that he raised his hand in the guise of taking the soap though the fact of spreading hands was improved in her statement before the inquiry officer.

22. Now, I have to see what was the mental and physical condition and conduct of the petitioner at the relevant time, whether he was in senses or his condition was abnormal. The Inquiry officer recorded the finding in this respect which reads as follows:

"Of course there is no much force in the allegation that Divyeshwar was in a drunk condition at that time. Otherwise, he could not have travelled from Petlad to Anand on a scooter at that time. But this type of behaviour or nervousness on the part of Mr. Divyeshwar after the incident clearly smells that he was not normal and his mental condition was also not normal as assessed by Ms. Srivastva and Mr. Vasa and by Anwar Malek."

It is a crucial point whether nervousness of the petitioner was intentional or pretending or it was due to sensation of vomiting and giddiness. Heavy duty lies on the authorities to determine and come to correct conclusion where defence case travels with a parallel version. According to the petitioner's explanation, he raised his hands for taking the soap from Ms. Srivastav and that Mr. Srivastav misunderstood that he wanted to misbehave her by raising his hands. The Inquiry Officer thought that the petitioner might have been the victim of his mental weakness at a particular time and he tried to misbehave with her. The Inquiry Officer also presumed that no lady judge would like to make false allegations but from the allegations, it appears to me that there is nothing on record to infer that Mr. Divyeshwar did any act which amounts to misconduct.

23. Now, it is to be seen whether any person can have feeling any sensation of giddiness or sensation of vomiting after taking a dinner. Was there any probability of such sensation of giddiness or vomiting ?

24. The petitioner has examined Pravinchandra Trivedi as defence witness no.2 who is the brother-in-law (sister's husband of the petitioner). This witness stated that he was residing at Petlad and working as a cashier in Bank of Baroda, Piplav. He went to meet Union leader and visited the petitioner's house at Anand for half an hour in the evening of 14.11.91 and asked the petitioner to leave him at Petlad. The petitioner went to the Guest house for informing the District Judge on phone as he was required to go out. Both of them went to Petlad. On much persuasion of his sister, the petitioner took dinner including Khaman which was brought from the market for serving as one of the dishes. The petitioner left the house of his sister at about 9.00 p.m. All of us know that Khaman is a dish which is like Dhokla and is prepared after spreading oil on a plate. We all know that there is no guarantee of the purity of oil used therefor. Many persons died and thousands were affected as a result of taking foods which were prepared with muster oil and which was found adulterated one.

Digestive capacity differs from person to person. Some persons cannot tolerate for some them and they died and various peprsons were able to tolerate for a long time and got treatment and were saved. Nobody can say that after taking dinner, a person cannot have sensation of vomiting. It happens some time either due to abdominal disorder or adulterated article or infection of any food material. After taking food, any person would chew betel with tobacco if he is not accustomed with chewing tobacco, then he will feel giddiness and sensation of vomiting. Even if any person is accustomed with chewing tobacco and takes much more tobacco, he will start sweating and he will have a feeling of giddiness and vomiting. Apart from taking food material, some times, persons fall down due to low blood pressure or diabetes when sugar goes down of the standard ratio. The persons affected feel some tendency of nervousness. At that time, that person requires immediate rest at suitable place and something for his relief such as cold drink or sweet after taking some rest and taking cold drink.he resumes to normal condition. The petitioner might have taken little tobacco in normal quantity or abdominal disorder, such tendency of not well and feeling of giddiness or vomiting cannot be ruled out in normal course of human conduct. The probability he might have given answer to Anwar "Ahmedabad" and to her "Khambhat" in nervousness is also not ruled out. The petitioner said that he felt sensation of giddiness in the way after leaving the house of his sister. He wanted to go to the house of Mr. Vasa but all the lights of his house were off, and considering that he might not be present in his house or his family members might be in the inner portion of his house and looking to the lights on in the house of Ms. Srivastav but in urgency, even without caring for the query raised by her servant, entered into the house of Ms. Srivastav, sat on the Diwan, removed his helmet and jacket and shoes. As he was urgently in search of a suitable place that he got the house of his colleague Judge. This fact is not disputed by Mr. Vasa that lights of his quarter were off. It is a consistent case of the complainant from the initial stage that after seeing him in her drawing room, she offered water and tea, but he requested for a Limca and he informed that he was feeling sensation of giddiness and vomiting. Limca was given to him. Not only she found abnormality in his conduct but also Mr. Vasa and Anwar Malek also found some abnormality in conduct. Thus, abnormality in his conduct due to nervousness as a result of sensation of vomitting and giddiness is not ruled out.

25. Now, the question arises is whether this

conduct of the delinquent officer comes within the meaning of misconduct or unbecoming of a judicial officer? Before coming to any conclusion, it is necessary to see the jurisdiction of High Court in this respect. Virtually, the High Court has very limited jurisdiction or power for judicial review of the findings of the Inquiry Officer/disciplinary authority. Three Judges bench of the Supreme Court in the case B.C. Chaturvedi vs. Union of India, reported in AIR 1996 SC, 484 has enumerated guidelines in this respect which read as under:

"12. The Court/Tribunal in its power of judicial review does not act as appellate authority to reappreciate the evidence and arrive at the own independent findings on the evidence. The Court/Tribunal only enter where the authority holds the proceedings against delinquent officer in a manner inconsistent with the rule of natural justice or in violation of statutory rules prescribing the mode of enquiry or where the conclusion or finding reached by the disciplinary authority is based on no evidence. If the conclusion or finding be such as no reasonable person would have reached, the Court/Tribunal may interfere with conclusions on the finding, and mould the relief so as to make it appropriate to the facts of each case."

"18. A review of the above legal position would establish that the disciplinary authority, on an appeal the appellate authority, being fact finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with a discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or appellate authority shocks the conscience of the High Court/Tribunal, it would appropriately mould the relief, either directing the disciplinary/appellate authority to reconsider the penalty imposed or to shorten the litigation, it may itself, in exceptional and rare case, impose appropriate punishment with cogent reasons in support thereof."

Hon'ble Justice Hansaria while considering complete justice under section 11A of the Industrial Disputes Act and Article 142 of the Constitution, further observed as under:

"I would therefore, think that but for the self imposed limitation which exercising power under Article 226 of the Constitution, there is no inherent reason to disallow application of judicial mind to the question of proportionality of punishment/penalty. But then while seized with question as a writ court interference is permissible only when the punishment/penalty is shocking disproportionate."

26. Thus, appreciation of evidence is strictly prohibited while exercising powers by the High Court/Tribunal, but section 11-A which has been inserted by the Legislature in the year 1971 in the Central Act. "Industrial Disputes Act", authorises Labour Courts, Tribunals, National Tribunals to give appropriate relief in case of discharge or dismissal of workman wherein it is satisfied that the order of dismissal or discharge was not justified in the facts and circumstances of that case. That order can be set aside and reinstatement of a workman can be directed on such terms and conditions considered appropriate including lesser punishment. Full Bench of the Patna High Court in 1990 extended the jurisdiction of the Tribunal holding that the powers of appraisal of evidence adduced in domestic inquiry and grant of appropriate relief have been conferred to Tribunals by insertion of new provisions of law. It appears that the Legislature thought it that the High Courts have enough powers in writ jurisdiction for passing appropriate orders but in absence of specific powers, the Labour Court and Tribunals were handicapped in imparting with complete justice for setting aside the orders of dismissal or discharge for reinstatement of service etc. Thus, the concept of complete justice has been completely adopted by the Legislature in the case regarding dismissal or discharge of a workman before Labour Court or Tribunal, but the jurisdiction of the High Court under Article 226 of the Constitution has been made is very limited and this Court is empowered to judicial review in exercise of its jurisdiction only in four types of cases. (1) Where the conclusion of the departmental proceeding is based on no evidence, but there could be no case which is not based on evidence as the rule of evidence is not applicable in the departmental proceedings. If one says that some officers made a demand for illegal gratification, even though there is no direct evidence about the demand, the complaint finds support of the statement of that person and even though that person has no knowledge of direct demand, even then the case is considered based on evidence. Something said is presumed to be the evidence in the departmental

proceedings. Thus, we will not find a single case which is based on no evidence.

In the present case, the contention of the learned counsel for the petitioner appears to have some force that it is a case which is based on no evidence of misbehaviour by the petitioner with Ms. Srivastav, inasmuch as she felt unsafe and insecure when the petitioner raising his hands advanced towards her, she had suspicion and doubt about his intention and she presumed that by raising his hands, he wanted to misbehave with her. Actually he had not touched her nor any words were spoken by him for this purpose, nor he prevented her to go to her bedroom nor anywhere, attempted or tried to misbehave with her, it is based only on her suspicion, doubt or conjecture which is not based on any evidence. It is the best case of no evidence. Even then this Court cannot exercise its jurisdiction of judicial review of the findings recorded by the Inquiry Officer as the findings find support of the statement of Ms. Srivastav corroborated with the statement of Mr. Vasa and of Anwar.

(2) Second type of cases in which findings of the disciplinary authority can be reversed where the findings of the disciplinary authority are irrational then power of judicial review can be exercised, but it depends upon the mentality of the person judging the fact in the light of environment of the society and place. For instance, passing of a lady with golden ornaments on a scooter on road in odd hours of night in Gujarat State is not abnormal, wherein atmosphere is completely calm and peaceful, but in a city of UP, Bihar, Punjab and Assam, it will be considered to be abnormal. There is no para-meter in judicial review to judge a particular finding as irrational or rational. Thus, both these circumstances of no evidence and irrational are only notional concepts. One authority can say the conclusion as irrational, while on the same facts and circumstances, other can say the conclusions arrived at as rational one. I have not come across a single case which is based on no evidence or finding as irrational nor the learned counsel of either side could suggest any case which was based on no evidence or the findings were irrational.

(3) The third type of cases are wherein procedure adopted was violative of statutory rules or against principles of natural justice. Of course, High Court can exercise its jurisdiction in judicial review in such cases.

(4) Fourth type of cases were where punishment awarded

shocks the judicial conscience or punishment/penalty awarded is disproportionate, the High Courts are permitted to exercise judicial review in this respect.

27. There are various cases where acts amount to misconduct in technical or strict legal sense but not deserving substantial penalty. For an example, an officer dealing with huge quantity of money is charged of misappropriation of 10 or 20 rupees, that maybe an inadvertent mistake in counting but it is not a case for extreme penalty of dismissal on such a charge. Another instance of a case is where the charge is proved that the officer abuses his superior or subordinate officer on some fault and such abuse amounts to misconduct, but for such misconduct he should not be dealt with extreme penalty. No law requires the extreme penalty for an act which is a misconduct in technical sense unless only extreme penalty is provided therefor. Where other minor penalties are provided, then minor penalty should be awarded. Another instance of a case where a charge of misconduct against a judicial officer is that he was found travelling in a train without a ticket and he was penalised where the explanation of the judicial officer is that he received an information of death of his close relative and was to reach at the place of that relative at the earliest and he rushed to the railway station where train was to leave. The officer without taking a risk of leaving train, he caught the train without purchasing the ticket and informing the guard about his travelling for issuance of a ticket later on. In such case, if the charge of misconduct or unbecoming of an officer is proved then also extreme penalty of dismissal is not warranted. In the similar manner, if a judicial officer feeling sensation of vomiting and giddiness in nervousness rushed hurriedly for help to a house of a colleague lady Judge with whom he had no concern, for help by way of some rest or cold drink and went to the wash basin to be fresh where the lady officer reached with a soap, he raised his hand for taking the soap which gave an impression to her that he was raising his hands for misbehaving with her. Admittedly, he did not touch even her finger. He did not intercept her way or followed her when she went to another room for calling her servant. Such nervousness continued for some time. Such conduct may or may not amount to misconduct looking to urgent need of the officer for some help but extreme penalty of dismissal is not only disproportionate but also shocks judicial conscience particularly when the lady judge did not think it proper to report the matter for four days to anybody. She was not an illiterate lady

or ordinary rustic lady from rural area. Her explanation that she remained perturbed for four days has been considered genuine and acceptable. She is an educated and responsible judicial officer knowing pros and cons such delay in making complaint. It is not expected from such a responsible officer that she remained perturbed for four days and did not report to any official due to perturbation for four days. and she could have reported the matter immediately to the appropriate authority. She should have reported the matter to the District Judge or the Registrar of this Court in the same night either telegraphically or on telephone in case she thought it as an attempt of misbehaviour or serious matter. The Inquiry Officer could have accepted and has accepted her statement regarding raising of hands as true. If he had accepted the delay of four days as genuine or true due to perturbation, then he should have accepted the explanation of the delinquent officer that he spreaded his hand for taking the soap and for nothing else. The inquiry Officer proposed for extreme penalty or dismissal only on the basis of feeling of doubt or suspicion with an intention that he was to misbehave with her by spreading his hands. His act may amount to misconduct in a technical sense as according to the Inquiry Officer, he should not have gone to the house of a lady officer under any circumstances whatever urgency was for him. Whereas, on the other hand, the petitioner was nervous, he hurriedly rushed to the house of Ms. Srivastav for help on his feeling sensation of giddiness and vomiting. Thus, in my view extreme penalty of dismissal from service for conduct which is misconduct in technical sense shocks the judicial conscience particularly when such misconduct is not in respect of integrity of the officer. Extreme penalty of dismissal is not warranted at all in the facts and circumstances of the case. Gravity of the misconduct or unbecoming should have been looked into as held in the Supreme Court in the case of Ranjit Thakur vs. Union of India and others reported in 1987 (4) SCC, 611 affirmed the view taken in Bhagat Ram vs. State of Himachal Pradesh (AIR 1983 SC, 454) which reads as under:

"It is equally true that the penalty imposed must be commensurate with the gravity of the misconduct, and that any penalty disproportionate to the gravity of the misconduct would be violative of Article 14 of the Constitution."

28. So far as the second charge in respect of leaving headquarters without permission of the District Judge is concerned, Mr. Shelat, Additional Advocate



General conceded in this court that it is an act amounting to a technical misconduct and he did not argue in respect of this technical misconduct at all. In this respect, the petitioner filed a receipt of telephone charge and stated that he tried to contact the District Judge on phone before leaving Anand, but phone was received by the daughter of the District Judge. He was informed that the District Judge was not present at that time. This fact has not been controverted by the presenting officer at all. Moreover, Mr. Vasa admitted in his statement that leaving headquarters for couple of hours -three or four hours, permission is not required, but after return, written intimation should be given. According to the petitioner, he received an information next day regarding operation of his mother at Ahmedabad. Hence, after taking leave he had gone to Ahmedabad, Even if it is an act amounting to misconduct, according to Additional Advocate General it was only a technical misconduct.

29. As discussed above, I come to the conclusion that acts of the petitioner at the most amount to technical misconduct which do not warrant for extreme penalty of dismissal.

30. Now, the question which arises as to whether the matter be remanded to the Inquiry Officer/Disciplinary authority for consideration of quantum of penalty after allowing this petition or appropriate penalty be substituted. In case the matter is remanded to the Inquiry Officer/Disciplinary Committee of the High Court, the petition will have to be allowed and order of reinstatement with all consequential benefits will also have to be passed. The Inquiry Officer/Disciplinary Committee will have to issue a notice to the petitioner for hearing on the quantum of penalty, after giving an opportunity of hearing and the disciplinary committee will take a decision and recommendation will have to be made to the State Government and then appropriate decision would be taken. It will consume a lot of time and probability of further litigations is not excluded hence this Court is of the view treating it a rare case in which In order to shorten the process and litigation, it would be just and proper that penalty of withholding of three increments be substituted which would subserve the justice to the parties.

31. Accordingly, the petition is allowed in part. The penalty of dismissal recommended by the Disciplinary Committee of the High Court which became the

decision of the High Court after placing it on the table for 48 hours and the notification and the Resolution dated 5.4.93 passed by the State of Gujarat dismissing the petitioner from service are hereby quashed and set aside. The respondents are hereby directed to forthwith reinstate the petitioner in service with arrears of pay and allowances and all other consequential benefits and allow the petitioner to resume his duties. The punishment of dismissal is substituted with that of withholding of three increments for the technical misconduct committed by the petitioner or for technical conduct of unbecoming of a judicial officer. Rule made absolute accordingly with no order as to costs.

32. After pronouncement of this judgment, learned Government Solicitor Mr. S P Hasulkar requested that the operation of this judgment be stayed for a period of four weeks. I do not find any ground for entertaining this request. Accordingly, oral request made by Mr. Hasulkar is rejected.

(Kundan Singh,J)